

## WORKFORCE DEVELOPMENT DEPARTMENT[871]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 96.11, the Director of the Department of Workforce Development hereby gives Notice of Intended Action to amend Chapter 26, “Contested Case Proceedings,” Iowa Administrative Code.

This proposed amendment clarifies and simplifies the procedures by which claimants and employers interact with Iowa Workforce Development in the unemployment appeal process. This amendment also clarifies the subpoena processes for witnesses and for documents in contested case proceedings. The agency needs updated administrative rules to clarify these processes.

Any interested person may make written or oral suggestions or comments on the proposed amendment on or before November 14, 2017, by sending them to Emily Chafa, Iowa Workforce Development, Appeals Bureau, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [emily.chafa@iwd.iowa.gov](mailto:emily.chafa@iwd.iowa.gov).

This amendment does not have any fiscal impact on the State of Iowa.

Waiver provisions do not apply to this rule making.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code chapters 96 and 17A.

The following amendment is proposed.

Rescind rule 871—26.13(17A,96) and adopt the following **new** rule in lieu thereof:

#### **871—26.13(17A,96) Subpoenas for witnesses and documents.**

**26.13(1)** It is the responsibility of the parties to request the attendance of witnesses the parties believe have knowledge of the facts in issue in the contested case.

**26.13(2)** Upon the written request of a party in interest received at least three days prior to the hearing date, the presiding officer shall issue a subpoena compelling the attendance of a person at the contested case hearing.

**26.13(3)** The written request shall include:

- a.* The full name and mailing address or e-mail address of the person to be served; and
- b.* A statement of the relevance of the witness’s testimony and that it will not repeat or duplicate the testimony of other witnesses.

**26.13(4)** Upon the written request of a party in interest received at least three days prior to the hearing date, the presiding officer shall issue a subpoena duces tecum for documents or other items believed to be relevant to the facts in issue in the contested case. The request must specifically describe the items to be provided pursuant to the subpoena duces tecum.

**26.13(5)** Documents or other items subpoenaed for hearings shall be mailed, faxed, or e-mailed to the appeals bureau and to the other parties to the proceeding prior to the hearing date.

**26.13(6)** If the presiding officer deems it appropriate, the entity or person to whom a subpoena is directed shall be notified and given the opportunity to object to its issuance.

- a.* If an objection to the issuance of the subpoena is raised, the presiding officer, as a matter of discretion, may hear and rule on the objection prior to commencing the evidentiary hearing or may postpone the evidentiary hearing and schedule a special hearing to receive arguments from all parties concerning the issuance of the subpoena.

*b.* The presiding officer shall issue the subpoena if it is established to the presiding officer's satisfaction that the testimony or document sought is material and relevant, is not unduly repetitious of other evidence already of record or expected to be submitted by any party, and, in the case of the subpoena duces tecum, the records requested do not disclose business secrets or cause undue burden on the party to whom the subpoena is directed.

**26.13(7)** If the subpoena is granted over objection, the aggrieved party may, in accordance with Iowa Code section 17A.13(1), petition the district court for review of the action before proceeding further. The aggrieved party must promptly notify the presiding officer that a petition for judicial review of the subpoena order will be filed immediately so the contested case may be postponed until the court has issued its ruling. Nothing herein shall preclude an aggrieved party from including the granting or denial of a subpoena as grounds for appeal of the presiding officer's decision in the contested case to the employment appeal board of the department of inspections and appeals.

**26.13(8)** If any entity or person to whom a subpoena is directed refuses to honor the subpoena, the aggrieved party may, in accordance with Iowa Code section 17A.13(1), apply to the appropriate district court for an order to compel the entity or person to obey the subpoena.